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THE WEST VIRGINIA BAR ASSOCIATION

SELECTING JURORS*

HARRY E. WATKINS**

Many efforts have been made to eliminate the jury system, but all have failed. It is still recognized as the best, or at least the most acceptable, manner of ascertaining the truth. Generally speaking, the verdict of the jury is the first and last determination of a factual controversy. The few instances in which cases tried before a jury are ever appealed best illustrates its tremendous importance in our judicial system.

Since jury trial is guaranteed by state and federal constitutions, the jury system likely will be with us for many years to come. We can all recite instances where the jury system has failed completely, but, imperfect as it is, no satisfactory substitute has been devised which is worthy of serious consideration.

If it is such a permanent and important part of our society, should we not ask ourselves in what way it can be improved? Obviously the answer to this question is to improve the prevailing methods of selecting jurors. If jurors are selected by chance from voting lists, telephone directories, or other similar sources, there will always be many undesirable and wholly unfit jurors in our courts. In some jurisdictions, the jury commissioners write to the sheriff or some other office holder, asking him to submit names of jurors. Some have been known to submit names of persons who are none too intelligent but who are his personal followers, or persons to whom he is indebted politically. Frequently no instructions are given to him, and his list includes many who are actually exempt from jury service by state statute. Not knowing the jurors recommended, the commissioners automatically insert all names suggested into the jury box. Sometimes the list is made up almost wholly of one political or economic group, selected from one locality.

The result of such a system is obvious. Such a jury is not a true representation of the citizenship, and some are actually unfit for jury service. When the roll of jurors is called, the judge learns for the first time that some of his jurors are school teachers, city or state employees, pharmacists, ministers, or otherwise exempt because of occupation. Others are exempt because of age, or must be

* An address delivered at the Federal Judicial Conference of the Fourth Circuit, at Asheville, North Carolina, on July 19, 1941.

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sent home because of poor hearing or impaired health. Needless to say, such a system is an unnecessary waste of government money and of the juror's time. Some method of selection must be devised which will eliminate the unfit, exempt any undesirables, before their names are ever placed in the jury box.

Under the federal statute, the responsibility for the selection of names entering the jury box is placed in the hands of two persons, the clerk of court and a jury commissioner appointed by the court. While at least three hundred names must be in the jury box, the statute is silent as to how those names are to be selected. The commissioners may use any reasonable method they see fit.

Great care is used in the selection of jurors in the southern district of New York. A preliminary investigation is made, sufficient to indicate that each person on the list is a high type citizen. Thereafter, all prospective jurors are then summoned to appear before the commissioners at a definite time and are personally interviewed. At the same time, they are required to fill out a detailed questionnaire, answering many questions as to their qualifications for jury service. From all this information, the commissioners decide in each case whether or not the person would make a good juror. All information about that juror is placed on a card, indexed and filed, and is available to the judge when a trial jury is being selected. In Los Angeles, each prospective juror not only is interviewed personally but is given an intelligence test.

Title 28, section 413 of the *United States Code* provides:

“Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service.”

This statute emphasizes the importance of having a jury list composed of a cross-section of all economic groups. Every class in the community should be fairly well represented. Selection of jurors almost exclusively from any particular strata of civil life, whether from high or low income brackets, is not conducive to public justice.

Most persons are inexperienced in jury service, and should be instructed as to their duties when called to serve. It would seem to be a good practice for the presiding judge on the first day of the term to give detailed instructions as to the proper manner in which they can and should perform their duties. In some jurisdictions this is accomplished by delivering a small pamphlet to the

jurors, giving in simple language the importance of the responsibilities of jury service. I am informed that the administrative office of the United States courts has been considering the advisability of such a pamphlet for all United States courts. The method of selecting prospective jurors will vary in the metropolitan and rural districts. But, regardless of the district, the one aim should be to have a jury that is truly representative of the community and chosen from its best citizenship.

The system now used in the northern district of West Virginia has eliminated many of the evils mentioned and, although far from perfection, has worked well. Jurors at each place of holding court are selected from certain designated counties. For example, at Clarksburg about six hundred names are placed in the jury box. The names are apportioned among each magisterial district in each county in proportion to the voting registration lists. This list will ordinarily serve the needs of the court for at least two years. When the jury commissioners receive an order from the court for a new list of jurors, they select the name of one outstanding man in the district, to whom they write a letter advising him that he has been recommended as a man well acquainted with his county, and his magisterial district in particular, and requesting that he furnish the names of a given number of prospective jurors.¹ For his use in listing names, a form is sent him giving the name, address, and approximate age of each person recommended. A memorandum is also enclosed setting out the requirements for jury service.²

¹ The letter reads as follows: "Dear Sir: In making up the list of names placed in the Federal jury box from which the juries for the United States District Courts are drawn, the Jury Commissioners endeavor to find men who are the outstanding citizens of each community. We try to get really representative jurors, and we endeavor to draw from each locality in proportion to that locality's population. In doing this we must, of necessity, rely upon information furnished by men whom we believe to be themselves representative citizens.

"Your name has been given us as being a man who is well acquainted with your county in general, and your magisterial district in particular. We are, therefore, calling upon you to furnish us with a list of prospective jurors who reside in your magisterial district.

"We enclose herewith a memorandum showing the number and character of men we want, a form upon which you can fill in the names and addresses of the persons you feel would meet the requirements, and a franked envelope for your use in returning this list. This envelope requires no stamp.

"There is no appropriation available to compensate you for your trouble in furnishing us with these names, but we assure you that, if you furnish us with the number of names desired, it will be greatly appreciated by the Judge of this Court, and the undersigned jury commissioners."

² *Memorandum.* This Court desires, as Jurors, men of experience and character. The jurors should be selected in proportion to the respective political proportions in your district, *although we do not care to know the political affiliation of any of the persons you suggest as jurors.* Your jury list

Lists secured from this source generally contain the names of small and large business men, farmers, oil field workers, merchants in small villages, coal miners, and wage earners.

When the lists are received from the several magisterial districts, the commissioners send each person a letter³ and a questionnaire.⁴

The jury commissioners meet and carefully examine the questionnaires from each magisterial district, and select therefrom the number of names to which such magisterial district is entitled. In order to procure the names of six hundred jurors, about fifteen hundred questionnaires should be sent out. This system seems to be the most adaptable to our district after a study of the more progressive methods in selecting jurors in use today.

Where an exemption is claimed that is not statutory, such as the managing director of a firm, or only person in firm that passes on credit, *etc.*, the name of this type of prospective juror is placed in the active jury list. If and when his name is drawn for jury

should not be selected from any particular economic group. All classes in the community should be represented. No attention should be paid to fraternal or religious affiliations.

"Please submit the full Christian name and middle initial, if known, of each person.

"Do not submit names of persons over 65; lawyers; doctors; dentists; postmasters; employees of the United States; members of the National Guard; state and county employees; telegraph operators; registered pharmacists; mail carriers; nonresidents of the state of West Virginia; conductors and engineers of railways; ministers of the gospel; employees of hospitals, prisons or jails; members of any regularly organized fire or police department; teachers, professors, janitors or bus drivers for any school or college.

"Kindly submit names of persons who live in District, County."

³ "Your name has been listed as a prospective juror in the United States District Court by the jury commissioners. It is our desire to make this service as little of an inconvenience as possible.

"As you may know, there are certain types of cases which demand special qualifications for jurors, and other cases in which certain jurors would be ineligible to act.

"I enclose herewith a questionnaire, together with a self-addressed envelope which requires no postage, for the return of the same to me. If you will be so good as to fill out this questionnaire and return it, it may save your being called as a juror at a term of court at which you would be disqualified for most of the work.

"Thanking you for your cooperation in this matter," *etc.*

⁴ IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Questionnaire for Prospective Juror

Full name

Residence address

Occupation

By whom are you employed

Age Married or Single

Do you own real estate in your own name?

duty, he still has an opportunity to apply to the court to be excused. If the questionnaire reveals that the prospective juror is within one or two years of the age limit (under West Virginia law a juror sixty-five years of age may claim exemption), or if he claims exemption on account of defective hearing, or other bodily ailments, his name is not placed on the active jury list and his questionnaire is marked "Exemption granted". Matters relating to excuses are left exclusively to the judge. Wholesale excuses to busy business men are not granted.

Prospective jurors have responded almost one hundred per cent in returning their questionnaires and have cooperated with the jury commissioners in every way in furnishing the information required. Investigation shows that the questionnaire has been very helpful in securing jurors who are qualified, and can and will serve when called. From the questionnaires, the jurors are chosen and their names placed in the jury box, regardless of race, color, or previous condition of servitude, as required by Title 28, Section 415 of the *United States Code*. The judge meets and advises with the jury commissioners from time to time, but the selection of jurors is left exclusively to the jury commissioners. A separate card is prepared for each juror selected for service, showing the essential information contained on the questionnaire. This card is placed in the jury box by the jury commissioners pursuant to Title 28, Section 412 of the *United States Code*, and an order is entered and recorded in the Law Order Book showing the proceedings had in that respect. The information contained on the questionnaires is indexed and filed away for permanent record.

At least twenty days before the beginning of each term a formal order is entered directing the jury commissioners to draw a given number of names from the jury box, such jurors to attend

Is your health such that you can perform the duties of a juror

Is your hearing good

White or colored

Have you ever served as a juror in the United States District Court, and if so,
at what place

Do you hold any position of honor, trust or profit, under the government of
the United States, or the State of West Virginia

If so, state nature of position

Do you claim exemption from jury service

If so, state grounds of claim under remarks, below.

Remarks:

.....
(Signature)

Date, 19.....

either as grand or petit jurors. Juries are always drawn in open court and an order entered showing such proceedings.

The system of personal interview has much to recommend it and I am in favor of personal interview of all jurors wherever it is practicable. Careful use of the questionnaire is a splendid substitute for the personal interview. Either personal interview or the questionnaire insures that the deaf, incompetent, and many others who are wholly unfit, will never be called for jury service because their names will never enter the jury box.

Many good citizens never have an opportunity to serve as jurors. It is a privilege which should be given by the courts to as many different citizens as possible. This can be accomplished by use of the questionnaire. Jury service should develop better citizenship, because it impresses upon the juror his duties and responsibilities as a citizen. He becomes familiar with the laws of his government and how those laws may be violated. He ends his service feeling that he has had a part in the performance of the functions of government. At this particular time when our government is calling so many men into military service, it is particularly appropriate that those who are not qualified for military service should be given an opportunity to serve their government, because service develops loyalty and fidelity, the primary qualifications of good citizenship.

ANNOUNCEMENTS

1941 MEETING OF WEST VIRGINIA BAR ASSOCIATION

The annual 1941 meeting of the West Virginia Bar Association (its 57th) was held at the Greenbrier at White Sulphur Springs, West Virginia, on October 17 and 18, 1941. President O. E. Wyckoff, of Grafton, presided. A summary of the more important events of the annual meeting will be published in a subsequent issue of the *Law Quarterly*. The new officers of the Association for 1941-42 elected at the meeting are as follows:

President

George Richardson, Jr., Bluefield

Vice-Presidents

Ernest R. Bell, Fairmont

D. H. Rodgers, Martinsburg

L. Ebersole Gaines, Fayetteville

Executive Council

James M. Guiher, Chairman

Clarksburg

O. E. Wyckoff, Grafton